

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

## STAFF REPORT

Hearing Date/Agenda Number  
January 20, 2004 Item: 3.b.

File Number  
CP03-026

Application Type  
Conditional Use Permit

Council District  
5

Planning Area  
Alum Rock

Assessor's Parcel Number(s)  
481332055

### PROJECT DESCRIPTION

Completed by: Elena Lee

Location: West side of Jackson Avenue, approximately 150 feet southerly of Berkeley Way

Gross Acreage: 1.7

Net Acreage: 1.7

Net Density: N/A

Existing Zoning: R-1-8 Residential

Existing Use: Vacant

Proposed Zoning: No change

Proposed Use: Church (15,238 square feet)

### GENERAL PLAN

Completed by: EL

Land Use/Transportation Diagram Designation  
Medium Low Density Residential (8 DU/AC)

Project Conformance:  
☒ Yes ☐ No  
☐ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: EL

North: Residential

R-1-8 Residential and R-2 Residential

East: Residential and I-680

R-1-8 Residential and R-2 Residential

South: Residential and Junior High School

R-1-8 Residential and R-2 Residential

West: Residential

R-2 Residential and R-1-8 Residential

### ENVIRONMENTAL STATUS

Completed by: EL

☐ Environmental Impact Report found complete  
☐ Negative Declaration circulated on  
☒ Negative Declaration adopted on October 14, 1998

☒ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: EL

Annexation Title: Mayfair No. 7-A

Date: 01/22/59

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval  
☐ Approval with Conditions  
☐ Denial  
☐ Uphold Director's Decision

Date:

Approved by: \_\_\_\_\_  
☒ Action  
☐ Recommendation

### APPLICANT/OWNER/DEVELOPER

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Epenesa Fou Church  
Attn: Pastor Siasage Siamu  
2922 Whittington Drive  
San José, CA 95148

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**PUBLIC AGENCY COMMENTS RECEIVED****Completed by: EL****Department of Public Works**

See attached

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**Other Departments and Agencies**

See attached memorandum from the Fire Department, Santa Clara Valley Water District and Department of Fish and Wildlife.

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**GENERAL CORRESPONDENCE**

None received.

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant, Epenesa Fou Church, is requesting a Conditional Use Permit (CUP) to construct a 15,283 square foot church on a 1.4 gross acre site located in the R-1-8 Residence Zoning District. The Zoning Code requires a CUP for a church use in this zoning district.

A Conditional Use Permit (CP98-002) was granted for a 16,000 square foot church and a two-story pastor's residence for this site in 1998. However, the Conditional Use Permit expired in 2000 because construction had not commenced. The new application proposes primarily the same project with a few small changes. The two-story pastor's residence proposed for the southern portion of the site has been removed. The church building is approximately the same square footage as the original approved project. Additionally, a portion of the southern edge of the property adjacent to Silver Creek was sold to the Santa Clara Valley Water District, resulting in a site that is currently 0.3 acres smaller. The project will include a 6,124 square foot sanctuary hall (364 seats), a 6,324 square foot fellowship hall, and 2,789 square feet for office/kitchen/lounge uses.

The project is located on the west side of Jackson Avenue. The project is adjacent to Silver Creek along the south and I-680 to the east. Single-family residential uses are located to the north, south, east and west. Matheson Lee Junior High School is located directly to the south.

## **ENVIRONMENTAL REVIEW**

A Negative Declaration was adopted for the original project on September 23, 1998. Because the project remains substantially the same, an addendum to the original Negative Declaration has been adopted for the proposed revised project. The project will be conditioned to have archaeological monitoring during grading and construction because it is located in an archaeologically sensitive area near the creek.

## **GENERAL PLAN CONFORMANCE**

This project is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Medium Low Density Residential (8 DU/AC) in the new Public/Quasi-Public uses are allowed in any General Plan designation if the use is compatible with surrounding uses and is consistent with City policy. As discussed below, staff has determined that the proposed use is compatible with adjacent uses and consistent with City policy regarding the location of churches. The proposed project is also consistent with the General Plan's Neighborhood Identity Goal. Neighborhoods should include places for interaction among residents such as parks, community centers, schools, commercial areas, churches, and other gathering points. The proposed church provides an opportunity to replace a vacant site with a resource to enhance neighborhood interactions and identity.

## **ANALYSIS**

The primary issues associated with this project are conformance to the Church Location Policy, the Riparian Corridor Policy, and neighborhood land use compatibility.

### **Church Location Policy**

The proposed church project generally conforms to all of the requirements of the Church Location Policy. It exceeds the minimum one acre lot size and will provide 25 foot perimeter building setbacks along the north, west and south. The project provides a 5 foot setback along the northeastern perimeter. However, this section of the site is directly adjacent to a six-foot tall soundwall and the freeway. Because this is the least sensitive interface, staff has determined that a 25 foot building setback is not necessary. The project will include landscaped perimeters and adequate parking. The project has been designed for neighborhood compatibility. The project is compatible with the surrounding neighborhood, provides all required parking and circulation on-site and provides substantial landscaping.

### **Riparian Corridor Policy**

The proposed project conforms to Riparian Corridor Policy. The site is adjacent to the earthen channel of Silver Creek to the south. The project qualifies for a setback exception to reduce the minimum required setback from 100 feet to 30 feet because the site is located in an urban infill area. The building is set back 170 feet from the southern property line adjacent to the creek. The project maintains a landscaped 28 foot parking setback from the property line along the southwestern portion a five foot parking setback along the southeastern portion.

A 30 foot riparian corridor setback is provided within the Santa Clara Valley Water District right-of-way. The project meets the intent of the Riparian Corridor Policy because, although no longer provided on the property due to the Water District's purchase of that portion, the required 30 foot setback from the creek's top of bank is still provided. Additionally, the 30 foot setback corresponds to the existing setbacks of the single-family residences along Dobern Avenue to the west. The project will include the planting of riparian landscape species within the setback area, which is consistent with the long-term plan for the enhancement of the earthen channel of Silver Creek.

### **Land Use/Neighborhood Compatibility**

Conformance to the Zoning Code standards further establishes land use/neighborhood compatibility. The project conforms to the setback requirements of the subject residential zoning district, and will provide substantial new landscaping. Vehicular access to the site is being provided on Dobern Avenue, which is a residential street. A traffic analysis was completed by the Department of Public Works, which determined that there is sufficient traffic capacity to accommodate the traffic generated by this project. The proposed addition will create a one-story 28-foot tall building, with a tower element that brings the total height to 35 feet, which meets the Zoning Code height maximum for the single-family residential districts.

The building also includes a cross placed above the tower that extends the height to 40 feet. The Zoning Code allows architectural embellishments, such as a cross, mounted on a building and having a horizontal cross section of no more than 20 square feet, to be increased to a height of 40 feet provided that it does not exceed the height of the building on which it is mounted by more than five (5) feet. The plans currently show a tower element with a total height of 53 feet. The permit will be conditioned to require the submittal of revised plan showing that the tower element will have a maximum height of 40 feet, which has already been agreed to by the applicant. This architecture and scale would be consistent with the height and size of neighboring residential uses.

The proposed project will meet the Zoning Ordinance's parking requirement. Religious assembly facilities or churches are required to provide one parking space per four fixed seats or one per 30 square foot of area designed for assembly. The new building includes a 364 fixed seat primary worship space of 6,124 square-feet, which would require 91 parking spaces. The project also includes a 6,324 square foot multi-purpose "fellowship" hall with no fixed seats adjacent to the primary worship space. However, use of this space would be restricted to the times when the sanctuary is not in operation. The permit will include a condition that will require that the spaces be used at separate times. Sufficient parking will be provided on-site to avoid the need for parking on neighborhood streets.

Based upon the above analysis, staff has determined that the proposed design and location of the expansion of the church is a compatible land use.

### **CONCLUSION**

The project fully complies with the requirements of the City's Zoning Ordinance and adequately conforms to City Council Policies.

## **PUBLIC OUTREACH**

A notice of the public hearing was distributed to the owners and tenants of all properties within 500 feet of the project site and staff has been available to discuss the project with any interested parties.

## **RECOMMENDATION**

Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Medium Low Density Residential (8 DU/AC) on the adopted *San José 2020 General Plan Land Use/Transportation Diagram*.
2. The project site is located in the R-1-8 Residential Zoning District.
3. A Negative Declaration has been adopted for this project which indicates that certain mitigation measures will be incorporated into this project to prevent the occurrence of any significant adverse effect on the environment.
4. The project site is 1.7 acres in area.
5. The project site is vacant.
6. The project site is located on the west side of Jackson Avenue, approximately 150 feet southerly of Berkeley Way
7. The site is located adjacent to Silver Creek along the southern property line.
8. The applicant is proposing a Conditional Use Permit (CUP) to construct a 15,238 square foot church. A Conditional Use Permit is required in all Zoning Districts for a church.
9. This CUP will also serve as a Site Development Permit, including landscaping and the construction of 91 parking spaces and landscaping.
10. The Zoning Ordinance requires church uses to provide one parking space for every four seats in the building. The project proposes a maximum of 364 fixed seats and is providing a total of 91 on-site parking spaces. Use of the fellowship hall in the church is restricted to times when the sanctuary is not occupied.
11. The maximum height of the building will be 35 feet. The building also includes a cross element that will extend the height of the building to 40 feet. The Zoning Code (Section 20.30.300) allows architectural embellishments, such as a cross, mounted on a building and having a horizontal cross section of no more than 20 square feet, to be increased to a height of 40 feet provided that it does not exceed the height of the building on which it is mounted by more than five (5) feet.

This Planning Commission concludes and finds, based upon an analysis of the above facts, that:

1. The proposed project is consistent with the adopted *San José 2020 General Plan Land Use/Transportation Diagram* designation of Medium Low Density Residential (8 DU/AC).
2. The proposed project complies with all provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act (CEQA).
4. The project is in compliance with City Council Policy 6-21, *Church Location Policy*.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners or the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### **CONDITIONS PRECEDENT**

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated

precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

## CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Epenesa Fou Church," dated January 23, 2004, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).
3. **Plan Revisions.** Within 60 days of the issuance of this Permit and prior to recordation, the Applicant shall revise the project plans to include the item(s) listed below to the satisfaction of the Director of Planning. Failure to provide said revisions within 60 days shall render this permit null and void.
  - a. Lighting plan – provide information on the location and equipment for all proposed lighting.
  - b. Revised elevations- revise plans to show that the height of the tower and architectural embellishment conforms to the Zoning Code height maximum of 40 feet.
  - c. Revised landscaping plan-revise plans to show addition of landscaping between the parking lot and walkway located along the southern edge of the new building.
4. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.

5. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
6. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
7. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
8. **Lighting.** On-site lighting shall use Low-Pressure Sodium fixtures. All lighting, including lighting fixtures and building lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property. Electroliers shall not exceed 14 feet above grade.
9. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
10. **Roof Equipment.** All roof equipment shall be screened from view.
11. **Outside Storage.** No outside storage is permitted.
12. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
13. **Street Trees.** Street trees shall be planted along the East San Antonio Street frontage to the satisfaction of the Director of the Department of Streets and Traffic. A permit for this is required from the Department of Streets and Traffic, (408) 277-4373.
14. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
15. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-07242) to the satisfaction of the Director of Public Works:
  - a. *Sewage Fees:* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

- b. *Sanitary:* The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.
  - c. *Street Improvements:*
    - 1) Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
    - 2) Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
    - 3) Proposed driveway width to be 26'.
    - 4) Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
16. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, CP03-026, shall be printed on all construction plans submitted to the Building Division.
  - b. *Americans With Disabilities Act.* The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).
17. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
18. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
19. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
20. **Fire Flow.** Required fire flow for the site is 2,000 gpm, or as otherwise approved in writing by the Fire Chief.

21. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
22. **Church Seating.** No more than 360 seats shall be provided in the sanctuary at any one time.
23. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
24. **Fellowship/Multi-Purpose Room.** The area indicated as a "Fellowship/Multi-Purpose Room" on the approved site plan shall not be used concurrently with the fixed seat "Sanctuary".

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
  2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 350, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
    - a. A violation of any conditions of a Development Permit, Development Variance, Development Exception or other approval was not abated, corrected or rectified within the time specified on the notice of violation; or
    - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
    - c. The use as presently conducted creates a nuisance.
- c: Building Division (2)  
Engineering Services  
Attachments